

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

GARY L. SCHMELZER,
Plaintiff,

Case No. 1:10-cv-803
Spiegel, J.
Litkovitz, M.J.

vs.

PATRICK R. DONAHOE,
Postmaster General,
United States Postal Service,
Defendant.

ORDER

This matter is before the Court on defendant Patrick R. Donahoe's motion to compel deposition discovery pursuant to Fed. R. Civ. P. 26. (Doc. 17). Defendant seeks an order compelling plaintiff to appear for a deposition. Plaintiff Gary L. Schmelzer, who is proceeding pro se, has not responded to the motion.

Defendant noticed plaintiff's deposition for November 1, 2011, in Cincinnati, Ohio and served a notice of subpoena to produce documents relating to his employment discrimination claims on plaintiff at his address in Sulzbach, Germany. (Doc. 17, Exh. 2). Plaintiff sent a letter to defendant's counsel dated October 3, 2011, stating that he had sent all documents he had to disclose and due to his location in Germany he could not afford to appear in person for an oral deposition on November 1, 2011. (*Id.*, Exh. 3). Plaintiff stated he would appear in court once the specific court date was set per the Court's calendar order. (*Id.*). Plaintiff did not appear for his scheduled deposition on November 1, 2011. (Docs. 14, 16).

Pursuant to Fed. R. Civ. P. 37(a)(1), a party may move for an order compelling disclosure or discovery on notice to other parties and all affected persons. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the

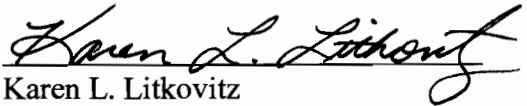
person or party failing to make disclosure or discovery in an effort to obtain it without court action. *Id.* Defendant Donahoe has neither made his motion pursuant to Rule 37 nor included the required certification showing that defendant in good faith conferred or attempted to confer with plaintiff in an effort to resolve this matter. Defendant's motion for an order to compel plaintiff to appear for a deposition must therefore be denied.

The Court notes that given plaintiff's location in Germany, there is an expectation defendant will arrange to take plaintiff's deposition by telephone or videoconference and thereby resolve the current dispute without the need for court action. Plaintiff is cautioned that if defendant makes such arrangements and plaintiff refuses to appear for his deposition, he will be subject to sanctions under Fed. R. Civ. P. 37(d)(1)(A)(i).

Defendant's motion to compel deposition discovery (Doc. 17) is **DENIED**.

IT IS SO ORDERED.

Date: 1/17/12


Karen L. Litkovitz
United States Magistrate Judge